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STATE OF CALIFORNIA
DEPARTMENT OF INSURANCE

In the Matter of the Accusation Against:
JASON DEWAYNE MCKELVEY,
Respondent.

**NOTICE AND ORDER REJECTING
PROPOSED DECISION**

Case No. LBB1764-AP

OAH File No.: L 2005010370

This matter came on regularly for hearing before Timothy S. Thomas,
Administrative Law Judge, Office of Administrative Hearings, in Los Angeles,
California on March 21, 2005.

Michael T. Tancredi, Staff Counsel, represented the California Department of
Insurance (hereinafter the “Department”).

The Respondent, Jason DeWayne McKelvey, appeared personally and
represented himself.

Oral and documentary evidence and evidence and the matter was submitted for
decision.

On or about April 20, 2005 Administrative Law Judge Thomas signed his
Proposed Decision. The Department received the Proposed Decision on or about April
22, 2005.

The Insurance Commissioner has considered the Proposed Decision of the
Administrative Law Judge in the above-entitled matter, submitted to the Insurance
Commissioner of the State of California under the provisions of Section 11517 of the
California Government Code, which Proposed Decision is hereby ordered officially filed.

After due consideration, the Insurance Commissioner has rejected the Proposed Decision insofar as the Factual Findings, Legal Conclusions and proposed action are concerned. The Insurance Commissioner will decide such matters upon the record pursuant to the provisions of subdivision (c)(2)(E) of Section 11517 of the Government Code.

In accordance with the above-mentioned provisions of the Government Code, and prior to the issuance of a final decision by the Insurance Commissioner:

1. You are entitled to a copy of the record. You will be required to pay the direct costs of making the copy.
2. You may submit written argument to the Insurance Commissioner. If you want a copy of the record and/or intend to submit written argument to the Insurance Commissioner, please notify the following person, in writing, within 30 days of the date of this notice:

Michael Tancredi
Staff Counsel
California Department of Insurance
300 S. Spring St. South Tower, Suite 12700
Los Angeles, California 90013

If you do not reply to this notice in writing within 30 days of the date set forth below, the Insurance Commissioner will decide the case upon the record and will issue his decision without further notice to you.

The Insurance Commissioner must issue his decision in this matter not later than 100 days after the date of this notice of rejection unless the transcript of the hearing is ordered. If the transcript is ordered, the decision must be issued not later than 100 days after the Insurance Commissioner receives the transcript.

You may authorize the Insurance Commissioner to decide the case upon the record, without including the transcript of the hearing. If you desire to do so, please

notify the person designated above in writing within 30 days of the date of this notice.

Dated this 26th day of May 2005.

JOHN GARAMENDI
Insurance Commissioner

By

-s-

CONNIE PERRY
Deputy General Counsel

BEFORE THE
DEPARTMENT OF INSURANCE
STATE OF CALIFORNIA

In the Matter of the Accusation Against:	Case No. LBB 1764-AP (AR)
JASON DEWAYNE MCKELVEY,	OAH No. L2005010370
Respondent.	

PROPOSED DECISION

On March 21, 2005, Administrative Law Judge Timothy S. Thomas, Office of Administrative Hearings, heard this matter in Los Angeles, California.

Michael T. Tancredi, Staff Counsel, represented complainant, the Commissioner of the Department of Insurance (hereinafter the department).

Jason DeWayne McKelvey (hereinafter respondent) appeared in propria persona.

The matter was submitted on March 21, 2005.

FACTUAL FINDINGS

1. Complainant filed the Accusation in his official capacity as Insurance Commissioner.
2. The department issued a fire and casualty broker-agent license to respondent on March 26, 2003.
3. On November 18, 2003, respondent pleaded nolo contendere to two counts of a three count misdemeanor complaint in Orange County Superior Court. The complaint charged respondent with threatening the victim with great bodily harm in violation of Penal Code section 422 (count 1), with assault in violation of Penal Code section 240 (count 2) and with battery in violation of Penal Code section 242. Count 1 of the complaint was dismissed upon respondent's pleas to counts 2 and 3. Respondent was placed on informal probation for three years and ordered to complete the following terms of probation, inter alia: 1) Pay a fine of \$225.00 and restitution to the victim; 2) Perform 30 days of Cal Trans service¹ in lieu of 45 days in jail; and

¹ On February 18, 2004, the court revised the Cal Trans requirement downward to 28 days, giving respondent credit for two days served in jail at the time of his arrest.

3) Attend and complete a ten-week anger management program at Orange Coast College. Respondent paid \$490.50 into court on February 18, 2004, and by February 20, 2004, he had completed both the Cal Trans work and the anger management program, three months ahead of schedule.

4. An investigative report prepared by the Orange County Sheriff's Department was received into evidence. The report documents an incident that occurred on July 1, 2003, at a business location in Laguna Hills where respondent's fiancé worked. According to respondent, his fiancé's supervisor had been verbally abusive toward his fiancé that day and the day before. Angry with his girlfriend's accounts of the alleged abuse, respondent drove to the business location and confronted the supervisor. According to the victim's account given to a Sheriff's deputy, respondent walked into the supervisor's office and slammed the door behind him. He then proceeded to threaten to kill the supervisor, picked up an "envelope sorter" that was on her desk and threw it at her. Respondent is alleged to have then gone around the desk and hit the supervisor, whose daughter appeared and intervened. Someone yelled that the police had been called, and respondent stopped his aggressive behavior. A sheriff's deputy arrived after respondent had left the premises, and documented a one-half inch laceration to the victim's elbow and contusions to her chest and neck areas. The deputy contacted respondent by telephone and respondent admitted to the deputy that he had threatened to kill the supervisor, but did not mean it when he said it. He denied hitting the victim, and did not know how she may have suffered her visible injuries. The deputy drove to respondent's location and arrested him. At the time of his arrest, respondent altered his statement given to the deputy earlier by claiming that he said to the victim, "I should kill you, but I'm not going to."

5. According to respondent's testimony at the hearing, the incident in Laguna Hills resulted from an admitted lack of judgment, "an act of chivalry" precipitated by the supervisor's verbal abuse heaped upon his fiancé. He admitted to "sweeping" a file stacker off of the victim's desk, but denied making any threats or having any direct physical contact with her. Respondent assumes that the supervisor may have hit her elbow on something when she recoiled from the scattering stacker and files.

6. Respondent is an intelligent young man of 23 years of age. He testified that he has been on his own since the age of 16. When his grandfather passed away, he sought and gained licensure with the department so as to join his grandmother in the family business, an insurance agency in Cypress, California. Respondent's uncle, Sean Fenner, also works in the family business. He testified that he was very disappointed in his nephew's conduct at the time of his arrest, which he feels was out of character. The witness believes respondent has learned a great deal about himself as a result of the incident and now has the maturity to walk away from serious conflict. Respondent's grandmother also attended the hearing in support of her grandson.

7. Respondent testified that he benefited from his anger management program, and that he continues to receive counseling. He realizes that his actions were wrong, that he should have allowed his fiancé to handle the situation herself.

8. Respondent is involved in charitable work with an organization known as Core Zone. He personally raises \$5,000.00 twice annually for the purpose of building houses in Mexican villages. Respondent has no history of criminal behavior other than the 2003 incident, and there is no evidence of prior disciplinary actions by the department against his license. Under all of the circumstances, it appears that the incident of July 1, 2003, was an isolated one. It was not related to the transacting of insurance business, and while one can appreciate the potential for anger management problems in the context of the licensed activity, respondent's prompt attention to his conditions of probation, his decision to continue therapy when not legally required to do so, the strong family support demonstrated at the hearing and respondent's appropriate and apparently sincere contrition, all represent factors that militate against imposing discipline on this license.

LEGAL CONCLUSIONS

1. Cause does not exist to discipline the license of respondent Jason DeWayne McKelvey pursuant to Insurance Code sections 1668, subdivision (b), and 1738, in that it was not established that it would be against the public interest to permit respondent to continue transacting insurance in this State, based on Factual Findings 2 through 8.

ORDER

The Accusation filed against respondent Jason DeWayne McKelvey is dismissed.

DATED: April 20, 2005

-S-

TIMOTHY S. THOMAS
Administrative Law Judge
Office of Administrative Hearings